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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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with, or during such stay of execution as may be granted by the court, he shall be committed to the county jail, there to remain until he pays the same or is discharged according to law; provided, however, that no stay shall be granted unless the defendant shall give a bond to the county, in such sum and with such sureties as shall be approved by the court for the payment of such money judgment on or before the expiration of such stay. Upon due notice to the county welfare board or the director of social welfare and the duly appointed guardian, if any, the judge of the district court before whom the proceedings are pending shall make and enter an order, directing and requiring the father of such child to pay to the county welfare board, or the director of social welfare such sum of money or its equivalent, as may be proper and adequate for the care, maintenance, and education of such child. (As amended Apr. 9, 1941, c. 152, §1.)

Laws authorizing court to order blood grouping test in cases of disputed paternity. *Beach v. B.*, (AppDC), 114F(2d)479.

3266. Father to pay all expenses.

Uniform Illegitimacy Act of South Dakota, providing for imprisonment for failure to file bond for support of

child, does not violate any constitutional provision of that state. *Acker v. A.*, 293NW(SD)83.

3272. (a) Director of social welfare may make settlement.—The director of social welfare shall have authority to accept from the acknowledged or adjudicated father of the child such sum as shall be approved by the court having jurisdiction of proceedings to establish the paternity of the child, in full settlement of all obligations for the care, maintenance and education of such child; and shall hold or dispose of the same as ordered by said court. Such settlement shall discharge the father of all further liability, civil and criminal, on account of such child, provided that such settlement shall not affect any liability of the father under Section 3266. (As amended Apr. 9, 1941, c. 152, §2.)

(b) * * * * *

Names of mother and child should not be published in county annual financial statement in connection with expenditures for hospital care and maintenance. *Op. Atty. Gen.* (277c-1), Jan. 27, 1941.

CHAPTER 18

Public Examiner

3274. Department established—Powers and duties.

Water, light, power and building commission of a village has no authority to engage private auditor. *Op. Atty. Gen.*, (476a-1), April 1, 1940.

3281. School districts, towns and villages.

Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. *Op. Atty. Gen.*, (476a-1), Dec. 5, 1939.

There is no authority for village to hire private auditors. *Op. Atty. Gen.*, (353a-3), Feb. 1, 1940.

3286. Assistants and employees and bonds to be given.

Public examiner has power to recommend that town-

ships use calendar year as their fiscal years. *Op. Atty. Gen.*, (353a-3), Jan. 11, 1940.

3286-6. State Auditor to certify amount due.

Section 3286-6 authorizes county auditor to make levy to pay for state's claim of public examination as an additional levy without regard to 17 mill limitation imposed by §2060-2. *Op. Atty. Gen.* (5190), Dec. 18, 1940.

3286-12. Shall collect information from municipalities.

City clerk may not be paid additional compensation for work in making out report of city affairs upon request of state public examiner. *Op. Atty. Gen.*, (60), March 1, 1940.

CHAPTER 19

Insurance

3287. Department of insurance.

Term of officer of commissioner of insurance is now 6 years, vacancies to be filled for unexpired portion of any term, and he cannot hold over until appointment and qualification of his successor. *Op. Atty. Gen.* Feb. 3, 1941.

3288. To enforce laws.

An annuity contract issued by a life insurance company, is not a "security" of sort dealt with by blue sky law, and is not subject to administrative powers of security commission. *Bates v. E.*, 288NW834. See *Dun. Dig.* 1125a.

3292. Examinations.

"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence, discussed. *Op. Atty. Gen.*, (250), Nov. 27, 1939.

3294. Commissioner may appoint examiner.

"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence, discussed. *Op. Atty. Gen.*, (250), Nov. 27, 1939.

GENERAL PROVISIONS

3306. Valuation of bonds, etc.—All bonds or other evidences of debt having a fixed term and rate held by an insurance company or fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal

and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and, provided further, that the commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule. If notes or bonds secured by mortgage or trust deed in the nature thereof which the Federal Housing Administrator has insured or made a commitment to insure are purchased above par, they may, if not in default as to principal and interest, be valued during the first five years after purchase on the basis of the purchase price adjusted in equal annual installments to bring the value to par at the end of five years. (As amended Apr. 9, 1941, c. 141, §1.)

3314. Insurance defined—Unlawful contracts—Contracts deemed made in this state.

Non-profit hospital service plan corporations shall be subject to insurance plans of state. Laws 1941, c. 53.

Where there is a conflict between provisions of an insurance policy form and terms inserted in such form to cover a particular case, latter must be accepted as dis-

closing true intent of parties. *Biwabik Concrete Aggregate Co. v. U.*, 288NW394. See Dun. Dig. 4659.

In case of doubt, subject matter may be examined for purpose of applying thereto language of contract. *Id.* Surrounding circumstances may be considered in determining meaning of insurance policies. *Id.*

An annuity contract issued by a life insurance company, is not a "security" of sort dealt with by blue sky law, and is not subject to administrative powers of security commission. *Bates v. E.*, 288NW334. See Dun. Dig. 1125a.

It is a general rule that a contract of insurance may not be extended either as to coverage or parties by waiver, and usual doctrine of waiver is applicable to breaches after insurance is effected or, after loss, to conditions precedent to suit. *Abeln v. I.*, 295NW54. See Dun. Dig. 4675.

3315. Capitol stock required and business which may be transacted.—

(a) Insurance corporations shall be authorized to transact in any state or territory in the United States, in the Dominion of Canada, and in foreign countries, when specified in their charters or certificates of incorporation, either as originally granted or as thereafter amended, any of the following kinds of business, upon the stock plan, or upon the mutual plan when the formation of such mutual companies is otherwise authorized by law.

1. To insure against loss or damages to property on land and against loss of rents and rental values, leaseholds of buildings, use and occupancy and direct or consequential loss or damage caused by change of temperature resulting from the destruction of refrigerating or cooling apparatus, or of its connections, by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, frost or snow, bombardment invasion, insurrection, riot, civil war or commotion, military or usurped power and loss or damage to property by explosion, whether fire ensues or not, except explosions on risks specified in sub-division 3 of this section; also against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes, and against accidental injury to such sprinklers, pumps, or other apparatus.

2. To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with marine risks of transportation and navigation, including the risks of lake, river, canal and inland transportation and navigation.

3. To insure steam boilers and pipes, flywheels, engines and machinery connected therewith or operated thereby, against explosion and accident, and against loss or damage to persons or property resulting therefrom, and against loss of use and occupancy caused thereby; and to make inspection of and to issue certificates of inspection upon such boilers, pipes, flywheels, engines and machinery.

4. To make contracts of life and endowment insurance, to grant, purchase, or dispose of annuities of endowments of any kind, and to insure against accidents to or sickness of the assured.

5. To insure against loss or damage by the sickness, bodily injury or death by accident of the assured, or of any other person employed by or for whose injury or death the assured is responsible.

6. To guarantee the fidelity of persons in fiduciary positions, public or private, or to act as surety on official and other bonds, and for the performance of official or other obligations.

7. To insure owners and others interested in real estate against loss or damage, by reason of defective titles, incumbrances, or otherwise.

8. To insure against loss or damage by breaking of glass, located or in transit.

9. To insure against loss by burglary, theft, or forgery.

10. To insure against loss from death of domestic animals and to furnish veterinary service.

11. To guarantee merchants and those engaged in business, and giving credit, from loss by reason of giving credit to those dealing with him; this shall be known as credit insurance.

12. To insure against loss or damage to automobiles or other vehicles and their contents, by collision, fire, burglary or theft, and other perils of operation, and against liability for damage to persons, or property of others by collision with such vehicles, and to insure against any loss or hazard incident to the ownership, operation or use of motor or other vehicles.

13. To insure against liability for loss or damage to the property of another caused by the insured or by those for whom the insured is responsible.

14. To insure against any loss or damage resulting from accident or injury suffered by any person, occurring in the practice of medicine, or surgery or in the dispensing of drugs or medicine, for which loss or damage the insured may be legally liable.

15. (a) To make contracts providing that upon the death of the assured a funeral benefit will be paid in money, the aggregate amount of which shall not exceed \$150.00 upon any one life. Provided, however, that any corporation that has been licensed to do business for three successive years may make contracts not to exceed \$300.00 upon any one life; provided further that any corporation licensed under this act which now or hereafter has a paid up capital of \$15,000.00, and maintains with the commissioner of insurance a deposit of \$15,000.00, may make life insurance contracts not to exceed \$600.00 on any one life and with or without indemnity for total and permanent disability such as are usually contained in life insurance contracts.

No such insurance company shall be operated directly or indirectly in affiliation or connection with any funeral director or undertaking establishment or contract by assignment or otherwise to pay such insurance or its benefits or any part of either to any funeral director or undertaking establishment pre-determined or designated by it so as to deprive the family or representatives of the deceased policyholder from, or in any way to control them in, obtaining for his funeral and burial, funeral services and supplies in the open market.

Provided, that nothing herein contained shall apply, nor shall it be construed to apply in any way to any co-operative burial association.

(b) The paid-up capital stock of every such corporation authorized to transact the kinds of business enumerated in subdivisions 1 to 15 of this section shall not be less than specified below:

Subdivision 1,	\$100,000.
Subdivision 2,	\$100,000.
Subdivision 3,	\$100,000.
Subdivision 4,	\$100,000.
Subdivision 5,	\$100,000.
Subdivision 6,	\$250,000, and a surplus constantly maintained of at least \$50,000.
Subdivision 7,	\$200,000.
Subdivision 8,	\$100,000.
Subdivision 9,	\$100,000.
Subdivision 10,	\$100,000.
Subdivision 11,	\$100,000.
Subdivision 12,	\$100,000.
Subdivision 13,	\$100,000.
Subdivision 14,	\$100,000.
Subdivision 15,	\$ 10,000.

Companies organized to transact business specified in Subdivision 15 shall be subject to all the provisions of law relating to legal reserve life insurance companies, except that the deposit with the commissioner of insurance shall be \$10,000 and that such company shall have secured at least one hundred applications, upon one hundred separate lives, for insurance aggregating at least \$10,000. Such companies shall issue only non-participating policies, which shall be construed as industrial policies.

Any such corporation having a paid-up capital stock of not less than \$200,000 and a surplus of not less than \$50,000 constantly maintained may, when authorized by its articles of incorporation, transact any or all of the kinds of business specified in Subdivisions 1 to 15 inclusive, excepting those specified in Subdivisions 1, 2, 4, 6 and 15. Any such corporation having paid-up capital stock of not less than \$200,000, may transact the kinds of business specified in Subdivisions 1, 2 and 12 of this section.

Any such corporation having paid-up capital stock of not less than \$200,000 and authorized to transact the kinds of business specified in Subdivision 4 of this section may also transact the kinds of business specified in Subdivision 5.

Any such corporation having a paid-up capital stock of not less than \$250,000 and a surplus of not less than \$50,000 constantly maintained, when authorized to transact the kinds of business specified in Subdivision 6, may also transact the kinds of business specified in Subdivisions 3, 5, 7, 8, 9, 10, 11, 12, 13 and 14. (As amended Act Apr. 17, 1941, c. 294, §1.)

(a)(1).

State statutes and corporate charter held to authorize company to insure against vandalism and malicious mischief. Op. Atty. Gen., (249B), Jan. 6, 1940.

(a)(5).

A life insurance company may transact business of public liability automobile insurance under this subsection. Op. Atty. Gen. (253B), Sept. 25, 1940.

(a)(6).

For cases on fidelity insurance, see §3710.

A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. Op. Atty. Gen., (980a-4), Jan. 31, 1940.

(a)(12).

Norwood v. T., 204M595, 284NW785, 131ALR1496. Where son obtained permission to use father's automobile for trip to Minneapolis from Duluth to attend football game, intending not to go to Minneapolis but to drive some friends to Chicago, and met with an accident while en route to Chicago, he was not using the car with his father's permission, expressed or implied, at time of accident, within omnibus clause of insurance policy. Liberty Mut. Ins. Co. v. S., (DC-Minn), 34FSupp 885.

Finance company could recover under collision policy amount remaining unpaid on contract, though vendee, unknown to finance company, sold car in another state so as to terminate interest of finance company and purchaser obtained other insurance before collision and repair of car, but could not recover amounts expended in ascertaining facts. Midland Loan Finance Co. v. S., 293 NW313. See Dun. Dig. 48750.

On death of insured in collision policy coverage terminated after 30 days, but there was an extension or renewal where widow assigned car by probate court was assured by agent who wrote policy that it would remain in effect until a certain date, though such agency had been terminated by insurer except for "service" to policies kept in force by insurer, there being a ratification due to knowledge of another agent of the facts and a subsequent notice of cancellation of policy with retention of premium past date of accident. Abeln v. I., 295NW54. See Dun. Dig. 48750.

(a)(13).

Contractor's public liability insurance policy (1) covering claims for bodily injuries accidentally suffered by persons other than employees of assured by reason of and during prosecution by the assured of business described as sand and gravel digging "including Drivers, Chauffeurs and their Helpers", and (2) excluding claims for injuries caused by any person while engaged in the maintenance or use of any draught or driving animal owned, hired, borrowed or used by the assured, is construed to cover claims for injuries resulting from a collision between an automobile and a horse which a driver employed by the assured had negligently permitted to wander on the highway. Biwabik Concrete Aggregate Co. v. U., 283NW394. See Dun. Dig. 4640.

Like any other contract, a public liability policy must be taken by its four corners and construed as a whole. Hutchinson Gas Co. v. P., 283NW847. See Dun. Dig. 4643.

Public liability policy held by a gas company held not to cover death by asphyxiation occurring after installation in a brooder house used by hunters in north woods. Id. See Dun. Dig. 4643.

Insurer under public liability policy excluding any obligation for injuries if caused by the possession, consumption or use elsewhere than upon the insured premises of any article manufactured, handled or distributed by the assured, a fuel dealer, is not obliged to defend a suit against the assured for injuries resulting when dynamite caps contained in coal delivered by the assured to a customer exploded while in the possession of the

latter's minor son. Lyman Lumber & Coal Co. v. T., 289 NW40. See Dun. Dig. 4643.

Insurer was bound to defend assured against only such claims as would, if proved, create liability against which insurer would be bound to indemnify assured. Id. See Dun. Dig. 4643.

3316. Insurance not specifically authorized by law may be transacted by licensed companies upon authorization by commissioner.—Any insurance corporation or association heretofore or hereafter licensed to transact within the state of Minnesota any of the kinds or classes of insurance specifically authorized under the laws of this state may, when authorized by its charter, transact within and without the state of Minnesota any lines of insurance germane to its charter powers and not specifically provided for under the laws of this state when such lines or combination of lines of insurance are not in violation of the constitution or laws of the State of Minnesota, and, in the opinion of the Commissioner of Insurance not contrary to public policy, provided such company or association shall first obtain authority of the Commissioner of Insurance and shall meet such requirements as to capital or surplus, or both, as the Commissioner of Insurance shall prescribe. Such additional hazards may be insured against by attachment to, or in extension of, any policy or policies which such company may be authorized to issue under the laws of this state.

This act shall apply to companies operating upon the stock or mutual plan, reciprocal or inter-insurance exchanges. (As amended Apr. 9, 1941, c. 134, §1.)

Statute and corporate charter held to authorize insurance of properties against loss or damage arising from collapse and slippage. Op. Atty. Gen., (249B), Jan. 6, 1940.

3319. Deposits with commissioner.

Statute does not permit any strings to be attached to mortgage deposited with commissioner so that a concealed owner can deprive either policyholders or creditors of insurance company of security and benefit of either its capital structure or the statutory deposit. Fredsall v. M., 289NW780. See Dun. Dig. 3177, 3204.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

3321. Agents and persons authorized to act.

On death of insured in collision policy coverage terminated after 30 days, but there was an extension or renewal where widow assigned car by probate court was assured by agent who wrote policy that it would remain in effect until a certain date, though such agency had been terminated by insurer except for "service" to policies kept in force by insurer, there being a ratification due to knowledge of another agent of the facts and a subsequent notice of cancellation of policy with retention of premium past date of accident. Abeln v. I., 295NW54. See Dun. Dig. 4704.

3322. Capital stock to be paid in full—Investment of funds.—The capital of every stock company shall be paid in full in cash within six months from the date of its certificate of incorporation, and thereupon a majority of the directors shall certify under oath to the commissioner that such payment in cash has been made by the stockholders for their respective shares, and is held as the capital of the company, and until then no policy shall be issued. Except as otherwise provided by law, the funds of every domestic company shall be invested in, or loaned upon, one or more of the following kinds of securities or property, and under the restrictions and conditions herein specified, viz:

1. Bonds or treasury notes of the United States, national or state bank stock, interest-bearing bonds or certificates of indebtedness at market value of this or any other state, or of any city, town, or county in this or any other state, or of the Dominion of Canada or any province thereof, having legal authority to issue the same, at market value, subject in every case to the same limitations and restrictions, according to the last assessment for taxation, which exists in this state upon issue of securities by such or like municipalities, at the date of the investment, or debentures

issued by the Federal Housing Administrator or obligations of National Mortgage Associations.

2. Notes or bonds, approved by the commissioner, secured by first mortgage on improved real estate in this or any other state, or in the Dominion of Canada, worth at least twice the amount loaned thereon, not including buildings unless insured by policies in an amount approved by the commissioner payable to and held by the security holder, or by a trustee for the security holder, or notes or bonds secured by mortgage, or trust deed in the nature thereof, which the Federal Housing Administrator has insured or made a commitment to insure.

3. Stock or bonds at market value, approved by the commissioner, upon which stock interest or dividends of not less than three per cent have been regularly paid for three years immediately preceding the investment, of any corporation incorporated by or under the Laws of the United States, or any state, or the Dominion of Canada, or any province thereof; or in the stock or guaranty fund certificates of any insurance company; or in the stock or bonds of any real estate holding company whose real estate is used in whole or in part in the transacting of the insurance business of such insurance company, either directly or by reinsurance, or in the fee to real estate used in whole or in part in such business; or in the stock or bonds of any corporation owning investments in foreign countries used for purposes of legal deposit, when the insurance company transacts business therein direct or as re-insurance. The making of investments under this sub-division shall be subject to the approval of the commissioner of insurance.

4. Insurance policies, issued by itself, to an amount not exceeding the net or reserve value thereof.

5. Promissory notes maturing within six months secured by the pledge of registered terminal warehouse receipts issued against grain deposited in terminal warehouses as defined in Section 4435, Revised Laws of Minnesota for 1913. At the time of investing in such notes the market value of the grain shall exceed the indebtedness secured thereby, and the note or pledge agreement shall provide that the holder may call for additional like security or sell the grain without notice upon depreciation of the security. The insurance company may accept, in lieu of the deposit with it of the warehouse receipts, a trustee certificate issued by any national or state bank at a terminal point, certifying that the warehouse receipts have been deposited with it and are held as security for the notes. The amount invested in the securities mentioned in this subdivision shall not at any time exceed 25 per cent of the capital stock of the company.

6. Loans on pledge of any such securities, but not exceeding 80 per cent of the market value of stocks and 95 per cent of the market value of bonds specified in subdivisions 1 and 3; and in all loans reserving the right at any time to declare the indebtedness due and payable when in excess of such proportion or upon depreciation of security. (As amended Apr. 9, 1941, c. 143, §1.)

3347. Taxation of insurance companies.

Insurance premium tax could not be collected from an insurance company licensed to do business in the state on the business of two other companies under receiverships and no longer having licenses to do business in the state, "management reinsurance agreements" giving the management company no present title to the assets of the companies in receiverships. Op. Atty. Gen. (254d), June 14, 1940.

Two year statute of limitations against actions for penalties or forfeitures is not applicable to a tax penalty, and especially a tax penalty upon a privilege tax such as gross premium taxes. Op. Atty. Gen. (254d), Nov. 7, 1940.

There is no tax on considerations received for annuity contracts. Op. Atty. Gen. (254d), Feb. 28, 1941.

PROVISIONS COMMON TO ALL COMPANIES

3348. Definitions.

Persons may solicit applications for insurance upon lives of service men in federal cantonments, forts, naval stations, and training camps within the state, without

obtaining a license under this section, if such places are purchased by consent of state legislature and are under control of Congress. Op. Atty. Gen. (249a-1), Mar. 14, 1941.

3370. Misrepresentation by applicant.

1. In general.

An insurer is entitled to void a life insurance policy, where assured made material misrepresentations in application. Rice v. N., 290NW798. See Dun. Dig. 4673.

LIFE INSURANCE COMPANIES

3376. Discrimination in accepting risks.

Discrimination as between charter and non charter policies. Lommen v. M., 289NW582. See Dun. Dig. 4808.

Statute prohibits discrimination against single premium life policies with respect to loan or surrender charge. John Hancock Mut. Life Ins. Co. v. Y., 295NW409. See Dun. Dig. 4816.

3377. Discrimination, rebates, etc.

Discrimination as between charter and non charter policies. Lommen v. M., 289NW582. See Dun. Dig. 4808.

Statute prohibits discrimination against single premium life policies with respect to loan or surrender charge. John Hancock Mut. Life Ins. Co. v. Y., 295NW409. See Dun. Dig. 4816.

This section is not violated by a scheme whereby finance company purchases livestock for farmer who takes out life insurance and gives a note or notes to cover both premium and cost price of livestock. Op. Atty. Gen. (5K), Dec. 9, 1940.

3384-1. Investment of domestic life insurance companies funds.—The capital, surplus and other funds of every domestic life insurance company, whether incorporated by special act or under the general law (in addition to investments in real estate as otherwise permitted by law) may be invested only in one or more of the following kinds of securities or property:

(1) Bonds or treasury notes of the United States; bonds of this state or of any state of the United States, or of the Dominion of Canada or any province thereof; bonds of any county, city, town, village, organized school district, municipality or civil division of this state, or of any state of the United States or of any province of the Dominion of Canada; debentures issued by the Federal Housing Administrator; and obligations of national mortgage associations.

(2) Notes or bonds secured by first mortgage, or trust deed in the nature thereof, on improved real estate in this or any other state of the United States having a value of at least fifty per cent more than the amount of the loan secured thereby, but no improvement shall be included in estimating such value unless the same shall be insured against fire by policies payable to and held by the security holder or a trustee for its benefit; also, if approved by the commissioner of insurance, notes or bonds secured by mortgage or trust deed upon leasehold estates in improved real property where forty years or more of the term are unexpired and where unencumbered except by the lien reserved in the lease for the payment of rentals and the observance of the other covenants, terms and conditions of the lease and where the mortgagee, upon default, is entitled to be subrogated to, or to exercise, all the rights and to perform all the covenants of the lessee, provided that no loan on such leasehold estate shall exceed fifty per cent of the fair market value thereof at the time of such loan, and the value thereof shall be shown by the sworn certificate of a competent appraiser; notes or bonds secured by mortgage, or trust deed in the nature thereof, which the Federal Housing Administrator has insured or made a commitment to insure.

(3) Bonds or obligations of railway companies, street railway companies and other public utility corporations incorporated under the laws of this state, the United States or any state thereof, or the Dominion of Canada or any province thereof, which shall not be in default as to the principal or interest on any outstanding issue of bonds; the debentures of farm mortgage debenture companies organized under the laws of this state and federal farm loan bonds.

(4) Stocks of national banks and state banks and of municipal corporations, and certificates of deposit of such banks, provided that not more than five per

cent of the admitted assets of the company shall be invested in such certificates of deposit; also stocks of railway companies, street railway companies and other public utility corporations which have paid dividends in cash upon their stock at the rate of not less than three per cent for a period of three years preceding the investment.

(5) In equipment obligations or equipment trust certificates; Provided, that such obligations or certificates mature not later than fifteen years from their date and are issued or guaranteed by a corporation to which a loan or loans for the construction, acquisition, purchase or lease of equipment have been made or approved by the Interstate Commerce Commission, under authority conferred by act of Congress of the United States of America or are secured by or are evidence of a prior or preferred lien upon interest in, or of reservation of title to, the equipment in respect of which they have been sold, or by an assignment of or prior interest in the rent or purchase notes given for the hiring or purchase of such equipment, and provided further, that the total amount of principal of such issue of equipment obligations or trust certificates shall not exceed seventy-five per cent of the cost or purchase price of the equipment in respect of which they were issued. The remaining twenty-five per cent of said cost or purchase price having been paid by or for the account of the railroad so constructing, acquiring, purchasing or leasing said equipment, or by funds loaned or advanced for the purpose by the government of the United States or one of its agencies or instrumentalities and subordinated in the event of default, in respect of the lien or interest thereof upon or in such equipment or rent or purchase notes, to the lien or interest of said prior or preferred equipment obligations or equipment trust certificates.

(6) Stocks of any life insurance company, provided that not more than four per centum of the admitted assets of any domestic life insurance company may be invested in stocks of other life insurance corporations; bonds, debentures, or the preferred or guaranteed stocks, of any solvent institution incorporated under the laws of the United States or of any state thereof, where any such institution, or in the case of guaranteed stocks the guaranteeing corporation, during each of the five years next preceding such investment shall have earned a sum applicable to dividends equal at least to four per centum upon the par value (or in the case of stock having no par value then upon the value upon which such stock was issued) of all its capital stock outstanding in each of such five years, and provided further that no such life insurance company shall invest in or loan on any such preferred stock in excess of ten per cent of the total issued and outstanding preferred stock of such institution, nor more than twenty per cent of the unassigned surplus and capital of such life insurance company.

(7) Promissory notes maturing within six months, secured by the pledge of registered terminal warehouse receipts issued against grain deposited in terminal warehouses as defined in Section 5016, General Statutes of Minnesota for 1923. At the time of investing in such notes the market value of the grain shall exceed the indebtedness secured thereby and the note or pledge agreement shall provide that the holder may call for additional like security or sell the grain without notice upon depreciation of the security. The insurance company may accept, in lieu of the deposit with it of the warehouse receipts, a trustee certificate issued by any national or state bank at a terminal point, certifying that the warehouse receipts have been deposited with it and are held as security for the notes. The amount invested in the securities mentioned in this subdivision, shall not at any time exceed twenty-five per cent of the unassigned surplus and capital of the company.

(8) Loans on the security of insurance policies issued by itself to an amount not exceeding the net

or reserve value thereof; and loans on the pledge of any of the securities enumerated in subdivisions (1) to (7) above, to the extent of the investment permitted in such securities, but not exceeding eighty per cent of the market value of stocks and ninety-five per cent of the market value of any other securities, and in all loans, except as otherwise provided by law in regard to policy loans, reserving the right at any time to declare the indebtedness due and payable when in excess of such proportion or upon depreciation of security.

No investment or loan, except policy loans, shall be made by any such life insurance company, unless the same shall first have been authorized by the board of directors or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transactions for such purchase or sale on account of said company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. (As amended Apr. 9, 1941, c. 140, §1.)

3392. Automatic or paid-up or extended insurance in certain cases.

Section does not apply to single premium policies by reason of its subject matter. *John Hancock Mut. Life Ins. Co. v. Y.*, 295NW409.

3394. Annual apportionment of surplus on existing policies.

Where life insurance company in settlement of litigation with a stockholder purchased latter's stock at more than twice its par value and real value, and later retired the stock, there was a "loss on investment" which was properly allocated between charter and non charter policies on fund ratio basis under applicable formula. *Lommen v. M.*, 289NW582. See Dun. Dig. 4808.

A life insurance company suffering legal expenses in litigation with holder of a charter policy concerning dividends or profits, such expense was correctly apportioned by company between charter and non charter policies by fund ratio. *Id.* See Dun. Dig. 4808.

Life insurance company under its agreement with charter policyholders should have accounted for item of rent for branch offices as an item of branch office expense and not as a general item of rent. *Id.* See Dun. Dig. 4808.

3398. Policies.

Discrimination as between charter and non charter policies. *Lommen v. M.*, 289NW582. See Dun. Dig. 4808.

3399. Forms.

$\frac{1}{2}$. Construction of contract in general.

Discrimination as between charter and non charter policies. *Lommen v. M.*, 289NW582. See Dun. Dig. 4808.

Statutes concerning forms of, and provisions to be included in, life insurance policies are in pari materia and so to be construed together in order to make them work harmoniously and effectuate their purposes. *John Hancock Mut. Life Ins. Co. v. Y.*, 295NW409. See Dun. Dig. 4807.

Commissioner should refuse to approve a form of single premium life policy containing a provision for a surrender charge in excess of 2½% of face amount of policy, modifying Op. Atty. Gen., June 24, 1935. Op. Atty. Gen., (253a-9), Feb. 9, 1940.

3. Permanent and total disability.

For provisions of accident and health insurance in general see §§3415 to 3427.

Walsh v. U. S., (DC-Minn), 24FSupp877. App. dis., (CCA8), 106F(2d)1021.

Section 3417(7)(C)(7) does not conflict with terms of an accident and health insurance policy within a life insurance policy which makes obligation to pay disability insurance dependent upon receipt of proof of insured's total and permanent disability as construed in *Floyd M. Andrews, Inc. v. Aetna Life Ins. Co.*, 198Minn1, 268NW415, 106ALR1085; *Barron v. Equitable Life Assur. Soc.*, 197M367, 266NW845; and *Berke v. New York Life Ins. Co.*, 293NW248. *Lindskog v. E.*, 295NW70. See Dun. Dig. 4874c.

A letter from insurer to administratrix of insured respecting total disability prior to death of insured held not a waiver of notice required by §3417(4)(C)(4). *Id.*

Mere inability to perform acts essential to accustomed profession or occupation does not, under Illinois law, constitute total disability. *Preveden v. M.*, 289NW46. See Dun. Dig. 4871c.

Doctrine of avoidable consequences does not operate to compel plaintiff to submit to medical treatment. *Miller v. M.*, 289NW399. See Dun. Dig. 4871c.

Insured claiming to be disabled by diabetes, has no duty to take insulin to remove the effect of the illness. *Id.* See Dun. Dig. 4871c.

Word "impossible" in policies defining "total disability" refers to nature of disability with reference to capacity to carry on gainful employment, and does not require insured to submit to medical treatment in an effort to remove disability. *Id.* See Dun. Dig. 4871c.

Under life insurance policy providing that "first income payment shall become due on the first day of the calendar month following receipt of proof of total and permanent disability," insured was not entitled to disability benefits for period between the date of disability and date of proof. *Berke v. N.*, 293NW248. See Dun. Dig. 4871c.

4. Double indemnity.

While part of life insurance policy concerning accidental death benefits must be construed and applied as written, any construction so unduly restrictive that it would defeat ends of accident insurance must be avoided. *Wolfangel v. P.*, 296NW576. See Dun. Dig. 4872.

In action by beneficiary in life policy for accidental death benefits it was incumbent upon plaintiff to prove that death resulted solely from accidental causes. *Id.* See Dun. Dig. 4875.

Where 12 days after an accidental fall, insured, a man of good health and vigor, was dead from syphilis, symptoms of which were not manifest before fall, in suit to recover accidental death benefits, whether death resulted directly and independently of all other causes from bodily injuries effected solely through external violent and accidental causes was for jury. *Id.* See Dun. Dig. 4871a.

5. Proof of loss.

When beneficiary in accident policy must show death as result of bodily injury effected solely through external, violent and accidental means, he has the burden of excluding suicide, though ordinarily in life insurance cases, where suicide operates as exception from or avoidance of the policy, burden to show suicide is upon insurer. *Ryan v. M.*, 289NW557. See Dun. Dig. 4811.

9½. Action on policy.

Construction of statute imposing damages upon insurance company for vexatious refusal to pay policy. *New York Life Ins. Co. v. C.*, (CCA8), 114F(2d)526. Cert. den. 61SCR141.

There being no claim that procurement of insurance policy indicated an intention of suicide on part of insured (he being dead and suicide the issue), it was not error to exclude evidence that he habitually carried life insurance to amount of policy. *Scott v. P.*, 290NW431. See Dun. Dig. 4811.

On issue of suicide, two audits of accounts of deceased in conduct of oil stations were properly admitted. *Id.* See Dun. Dig. 4811.

12. Group insurance.

Provision for extended life insurance in group policy, in case of termination of employment of insured, began to run from time that he received employer's letter notifying him of his discharge. *Geisenhoff v. J.*, 296NW4. See Dun. Dig. 4816a.

3400. Exceptions.

Statutory limitation of a loan or surrender charge is applicable to single premium policies. *John Hancock Mut. Life Ins. Co. v. Y.*, 295NW409. See Dun. Dig. 4645a.

Commissioner should refuse to approve a form of single premium life policy containing a provision for a surrender charge in excess of 2½% of face amount of policy, modifying Op. Atty. Gen., June 24, 1935. Op. Atty. Gen., (253a-9), Feb. 9, 1940.

3402. Provisions which must be included.

(6).

Discrimination as between charter and non charter policies. *Lommen v. M.*, 289NW582. See Dun. Dig. 4808.

(7).

Limitation of a loan or surrender charge to 2½ per centum of amount insured is applicable to single premium life policies. *John Hancock Mut. Life Ins. Co. v. Y.*, 295NW409. See Dun. Dig. 4659a.

(8).

Commissioner should refuse to approve a form of single premium life policy containing a provision for a surrender charge in excess of 2½% of face amount of policy, modifying Op. Atty. Gen., June 24, 1935. Op. Atty. Gen., (253a-9), Feb. 9, 1940.

3406. Provisions which no policy may include— Limited coverage.—

Subdivision 1. No policy of life insurance in form other than as prescribed in Section 2 shall be issued or delivered in this state or be issued by a life insurance company organized under the laws of this state, if it contain any of the following provisions:

(1) A provision for forfeiture of the policy for failure to repay any loan on the policy or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof; or any provision

for forfeiture for failure to repay any such loan or to pay interest thereon, unless such provision contain a stipulation that no such forfeiture shall occur until at least one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. Notice of whose address and contract of the assignment has been filed with the company at its home office.

(2) A provision limiting the time within which any action at law or in equity may be commenced to less than five years after the cause of action shall accrue.

(3) A provision by which the policy shall purport to be issued or to take effect before the original application for the insurance was made, if thereby the assured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

(4) A provision for any mode of settlement at maturity of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on the policy and less any premium that may by the terms of the policy be deducted.

Subdivision 2. (1) Policies of life insurance may be issued in this state or be issued by a life insurance company organized under the laws of this state which limit coverage (either by provisions in the policy or in a rider made a part thereof) to an amount not less than the reserve on the policy (including the reserve for any paid-up additions thereto and any dividends standing to the credit of the policy) less any indebtedness to the company on the policy, when such limitation conforms with, or in the opinion of the insurance commissioner is more favorable to the policyholder than, the following:

(a) A provision in a policy issued on the life of a person employed in an occupation classed by the company as extra hazardous or as leading to hazardous employment, limiting coverage in event of service in certain designated occupations, in the event of death occurring as a result of aviation or aeronautics under conditions specified in the policy (except as a result of riding as a fare-paying passenger of a commercial air line flying on a regularly scheduled route between definitely established airports). (As amended Act Apr. 14, 1941, c. 218, §1.)

ACCIDENT AND HEALTH INSURANCE

3417. Standard provisions.

For cases construing total disability clauses in life insurance policy, see §3399, note 3.

1. In general.

Where express provisions of insurance policies do not require insured to submit to medical treatment, there is no duty on insured to undergo it as a condition precedent to recovery of disability benefits. *Miller v. M.*, 289NW399. See Dun. Dig. 4871c.

1½. Accident and disability clauses in life policies.

Where twelve days after an accidental fall, insured, a man of good health and vigor, was dead from syphilis, symptoms of which were not manifest before fall, in suit to recover accidental death benefits, whether death resulted directly and independently of all other causes from bodily injuries effected solely through external violent and accidental causes was for jury. *Wolfangel v. P.*, 296NW576. See Dun. Dig. 4871a.

4b. Notice of claim.

A letter from insurer to administratrix of insured in life policy with respect to total disability of insured prior to death held not a waiver of notice required by this section. *Lindskog v. E.*, 295NW70. See Dun. Dig. 4874c.

6. Evidence.

When beneficiary in accident policy must show death as result of bodily injury effected solely through external, violent and accidental means, he has the burden of excluding suicide, though ordinarily in life insurance cases, where suicide operates as exception from or avoidance of the policy, burden to show suicide is upon insurer. *Ryan v. M.*, 289NW557. See Dun. Dig. 4874b.

Presumption against suicide does not shift burden of proof. It is but a rule of law dictating decision on unopposed facts and shifting burden of going forward with evidence. *Id.* See Dun. Dig. 4874b.

In action on policies of accident insurance, burden is upon plaintiff to show that disease was not a contributing cause of death. *Id.* See Dun. Dig. 4873.

7. Questions for jury.

If evidence is equivocal and open to interference that death was due in part to disease and not caused exclusively by accident, verdicts for insurers will not be disturbed. *Ryan v. M.*, 289NW557. See Dun. Dig. 4873.

7½. Instructions.

Presumption against suicide is not evidence in action on accident policy, and so plaintiff was not entitled to an instruction that "there is in law a presumption against suicide". *Ryan v. M.*, 289NW557. See Dun. Dig. 4875.

8. Proof of loss.

This section does not conflict with terms of an accident and health insurance policy contained within a life insurance policy which makes obligation to pay disability insurance dependent upon receipt of proof of insured's total and permanent disability as construed in *Floyd M. Andrews Inc. v. Aetna Life Ins. Co.*, 198M1, 268NW415, 106ALR1085; *Barron v. Equitable Life Assur. Soc.*, 197 M367, 266NW845; and *Berke v. New York Life Ins. Co.*, 293NW248. *Lindskog v. E.*, 295NW70. See Dun. Dig. 4874c.

3426. Not to affect workmen's compensation insurance, etc.

(2). This sub-section has apparently made §§3415 to 3427 inapplicable to policies of life insurance providing for total disability benefits. *Lindskog v. E.*, 295NW70. See Dun. Dig. 4875.

FIRE INSURANCE COMPANIES**3512. Standard fire policy.****4. Limitation of actions.**

A limitation of one year after loss, fixed by a policy of automobile fire insurance for commencing actions thereunder, is valid. *Gendreau v. S.*, 288NW225. See Dun. Dig. 4732.

7½. Fraud.

Provision in standard policy which declares void any policy on which insured shall attempt to defraud insurer either before or after a fire, is not invalid for constitutional reasons considering public interest affected and gravity of offense. *Supornick v. N.*, 296NW904. See Dun. Dig. 4792a.

Evidence held to support finding that insured, both in statement of loss and damage and in testimony before appraisers, attempted to defraud insurer by intentional misrepresentation of loss. *Id.*

10. Arbitration.

If arbitration fails through fault of the insurer, it waives compliance with arbitration clause by the insured, and if arbitration fails through fault of the insured, absence of an award bars an action on policy by him. *Kavli v. E.*, 288NW723. See Dun. Dig. 4793.

Purpose of arbitration under a fire policy is to provide a plain, speedy, inexpensive and just determination of extent of the loss. *Id.* See Dun. Dig. 4793.

Appraisers may appoint an umpire before they have qualified. *Id.* See Dun. Dig. 4794.

Absent a policy provision allowing appraisers a certain time within which to name an umpire, it is the duty of a party to choose an appraiser who will act with reasonable promptness with the other appraisers in naming an umpire. *Id.* See Dun. Dig. 4799.

10½. Appraisal.

Standard form fire insurance policy requires the appraisers to name umpire within five days and authorizes the judge of district court to make appointment if appraisers cannot do so within time stated, regardless of whether inability is due to failure to agree after attempting to do so or to failure to attempt to agree at all. *Kavli v. E.*, 288NW723. See Dun. Dig. 4794.

While an appraiser or referee is not representative or agent of party appointing him so as to be subject to his control while performing his duties as appraiser, and it would be highly improper for appraiser to submit to control or influence of such party, party appointing an appraiser is responsible when appraiser whom he selected arbitrarily and unfairly refuses to act with other appraisers. *Id.* See Dun. Dig. 4799.

10½. Reformation of policy.

Fire insurance policy was reformed for mistake of agent as to property covered. *Dose v. I.*, 287NW866. See Dun. Dig. 4652a.

13. Estoppel and waiver.

Risk of loss from fire having attached to policy, insurer, as a price of asserting its defense of attempted fraud by insured, was not required to return premium. *Supornick v. N.*, 296NW904. See Dun. Dig. 4683.

Where question of waiver by insurer of its defense of attempted fraud was not presented to lower court and did not appear in specifications of error in motion for new trial, that question will not be considered on appeal. *Id.* See Dun. Dig. 4789.

3513. Automobile fire insurance policies.

An automobile trailer was a "motor vehicle" under statute. *Gendreau v. S.*, 288NW225. See Dun. Dig. 4759.

3516. Whole amount collectible—Co-insurance, etc.

Statute embraces oral as well as written applications. *Dose v. I.*, 287NW866. See Dun. Dig. 4704.

One, otherwise a mere broker, who procures application for fire insurance and issue of a policy thereon be-

comes so far insurer's agent that his mistake of fact as to property to be covered, is chargeable to insurer. *Id.* See Dun. Dig. 4717.

MISCELLANEOUS PROVISIONS REGARDING VARIOUS KINDS OF MUTUAL COMPANIES**3545. Non-assessable policies may be written—Etc.**

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. *Op. Atty. Gen.*, (707a-13), Jan. 31, 1940.

3547. Prerequisites of mutual companies transacting business other than life, fire, accident, etc.

A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. *Op. Atty. Gen.*, (980a-4), Jan. 31, 1940.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. *Op. Atty. Gen.*, (707a-13), Jan. 31, 1940.

INSURANCE ON STATE BUILDINGS AND PROPERTY**3599. State property—Rural Credits Bureau may insure buildings.**

The credit, 1921, c. 288, §4B, should be stricken from this section in 1940 Supp.

State may not carry fire insurance on supplies stored in store room in state capital. *Op. Atty. Gen.*, (980a-8), Oct. 13, 1939.

COMPENSATION INSURANCE BUREAU**3618. Duties—Rates of insurance.**

Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of \$300. *Op. Atty. Gen.* (517K), Oct. 2, 1940.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. *Op. Atty. Gen.*, (517K), Oct. 2, 1940.

3630. Insurers shall not discriminate.

"Over-all Retrospective Coverage" plan of insurance. *Op. Atty. Gen.*, (517J), Feb. 7, 1940.

Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of \$300. *Op. Atty. Gen.* (517K), Oct. 2, 1940.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. *Op. Atty. Gen.*, (517K), Oct. 2, 1940.

3631. Rates shall be filed.

Op. Atty. Gen., (517J), Feb. 7, 1940; note under §3630. Opinion of Oct. 21, 1930, is overruled. *Op. Atty. Gen.*, (517K), Oct. 25, 1940.

3632. Rates to be uniform—Exceptions.

Op. Atty. Gen., (517J), Feb. 7, 1940; note under §3630. Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of \$300. *Op. Atty. Gen.* (517K), Oct. 2, 1940.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. *Op. Atty. Gen.*, (517K), Oct. 2, 1940.

3634-1. Insurers required to take certain risks—Refusal to write—Statement.

City employees working out relief furnished them cannot waive their right to benefit of compensation act, notwithstanding they are subject to epileptic fits and insurance companies hesitate to issue policies covering them. *Op. Atty. Gen.*, (523a-17), Jan. 30, 1940.

3634-2. Bureau to fix premium rates.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming

opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. Op. Atty. Gen., (517K), Oct. 2, 1940.

3634-6. Liability of insurers.

Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of \$300. Op. Atty. Gen. (517K), Oct. 2, 1940.

TOWNSHIP MUTUAL COMPANIES ORGANIZATION

3649-2. Township mutual fire insurance companies may insure grain in sealed containers.—In addition to the powers and privileges now conferred upon them by law, township mutual fire insurance companies organized under the provisions of Chapter 411, Laws 1909, and acts amendatory thereof are hereby authorized to insure against loss or damage by hail, windstorm, tornado, cyclone, and inherent explosion, for their members, corn and other grain while stored in sealed containers in accordance with the regulations of the federal government. (As amended Apr. 9, 1941, c. 131, §1.)

3659. What may be insured.—Subdivision 1. No township mutual fire insurance company heretofore organized and no company organized pursuant to this Act shall insure any property outside of the limits of the town or towns in which such company is authorized by its certificate or articles of incorporation to transact business, except personal property temporarily outside of such authorized territory and, except as hereinafter further provided; nor shall any township mutual fire insurance company insure any property other than dwellings and their contents, farm buildings and their contents, livestock, farm machinery, automobiles, country store buildings, and the household goods therein, threshing machines, farm produce anywhere on the premises, churches, and their contents, school houses, and their contents, society and town halls, and their contents, country blacksmith shops and their contents, parsonages and their contents, and the barns and contents used in connection therewith, creameries, cheese factories and their equipment and contents, and respective operators dwelling houses and contents, and barns and contents used in connection therewith, and dwellings together with the usual outbuildings and the usual contents of both said dwellings and outbuildings in any city, village or borough of 1,250 or less inhabitants, and any county poor farm together with contents and such personal property as used in connection therewith and which real property, contents and personal property is situated in such county wherein such Township Mutual Fire Insurance Companies are operating, providing, when at a duly called special or annual meeting of the policyholders it shall be duly decided by them, by a majority vote, to do so.

Subdivision 2. Otherwise than as hereinbefore provided, no such company shall insure any property within the limits of any city or village except that located upon lands actually used for farming or gardening purposes, but whenever the dwelling of any persons insured is within the limits of a town where the company is authorized to do business, and the farm on which such dwellings are situated is partly within and partly without such town, it may include in such insurance any outbuildings, farm produce, stock or other farm property or such farm outside of such limits; provided, however, any such company is hereby authorized to insure county fair buildings whether the same are situated either within or without the limits of a duly incorporated village or city.

Subdivision 3. No law relating to insurance companies now in force in this state shall apply to township mutual fire insurance companies unless it shall be expressly designated in such law that it is applicable to such companies. (As amended Apr. 9, 1941, c. 155, §1.)

Town mutual fire insurance companies have same authority to insure property within limits of cities and villages of over 1000 population as they have to insure property within limits of town of their incorporation, provided property is located on land actually used for farming or gardening purposes. Op. Atty. Gen., (487c-3), Mar. 4, 1941.

Where policy of insurance on property in a village is issued when the village has a population less than 1000 it should be kept in force until expiration date, notwithstanding that population has increased beyond 1000. Op. Atty. Gen., (487c-3), Mar. 5, 1941.

Population of a village is to be determined from records of last preceding census, state or federal, notwithstanding that a new business has been set up and there is actually a large increase in population. Id.

FIDELITY AND SURETY COMPANIES

3710. Fidelity and surety companies.

Suretyship in general, see notes under c. 49A, notes 32 to 35.

Where part of a judgment attributable to a claim is a mere matter of mathematical calculation, it is permissible for parties to judgment to allocate to such a claim by such a calculation part of money paid in settlement of a judgment including another claim, as affecting liability of fidelity insurer. *State Bank v. A.*, 288NW7. See Dun, Dig. 4875q.

Provision in fidelity policy requiring notice of discovery of loss within a stipulated period are limitations on liability coverage. Id.

Where there is doubt as to meaning of a fidelity policy it is construed in favor of insured. Id.

Where notice of loss is given and proof of claim is filed under a fidelity policy, before payment of judgment in money, and insurer denies liability under policy, such disclaimer is a waiver of further notice of loss and filing of another claim after payment of judgment, though under policy loss does not occur until payment of judgment. Id.

Fidelity insurance covers all losses due to acts of employee committed during coverage term, whether discovered during that time or afterwards. Id.

Where loss does not accrue until payment in money of a claim against indemnitee based on a claim against indemnitee based on a defalcation covered by policy, time for giving notice of loss and filing proof of claim within a stipulated time after discovery of loss runs from time of payment of claim. Id. See Dun, Dig. 9107b.

Surety on fidelity bond of manager of elevator was liable for gross profit made by manager in purchase of grain from his principal and trucking it to other places for sale, though employer did not engage in trucking grain to sell and there was no competition. *Raymond Farmers Elevator Co. v. A.*, 290NW231. See Dun, Dig. 4875q.

If liability of principal in fidelity bond is established, whether before court or jury, or in same or separate actions, only question in determining surety's liability is whether acts for which principal is liable are within provisions of bond. Id. See Dun, Dig. 4875q.

A suit against a surety on contract of fidelity is an action for recovery based upon promise to pay and is triable by a jury ordinarily, but this may be qualified by nature of surety contract. Id. See Dun, Dig. 4875q.

By contract surety on fidelity bond and employer can determine upon whom burden of proof shall rest, but as between employer and employee the burden of proof is one imposed by law, and suretyship contract does not operate on it. Id. See Dun, Dig. 4875q.

In action by elevator company against manager for an accounting and a money judgment, in which surety on fidelity bond was named as a defendant, manager was not entitled to a jury trial, and surety could not complain that trial court withdrew case from jury and tried it as a court case, acts committed by manager during his employment coming within provisions of surety bond. Id. See Dun, Dig. 4875q.

A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. Op. Atty. Gen., (980a-4), Jan. 31, 1940.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

PROVISIONS REGARDING FOREIGN COMPANIES

3721. Retaliatory provisions.

"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence, discussed. Op. Atty. Gen., (250), Nov. 27, 1939.

FIRE AND POLICE DEPARTMENT AID AND FIREMEN'S AND POLICEMEN'S RELIEF

3725. Auditor's warrant.

Village may continue to receive its share of 2% premium tax after discontinuance of relief association. Op. Atty. Gen., (198B-1), Oct. 30, 1939.

3726. Special fund—Disbursements—Payments to relief associations.

Firemen's relief association may not spend any part of special fund derived from two per cent gross insurance premium tax for uniforms for members to be worn only for dress purposes. Op. Atty. Gen., (198B-10(e)), Oct. 23, 1939.

Since statute was amended by Laws 1937, chapter 349, procedure by application to district court is no longer required in connection with disposition of money upon disbandment of relief association. Op. Atty. Gen., (198a), Nov. 21, 1939, modifying, Op. Atty. Gen., Oct. 30, 1939.

Funds belonging to Firemen's Relief Association may be used to purchase a new fire truck, or may be invested in warrants or certificates of indebtedness of village, regardless of source of funds. Op. Atty. Gen., (198B-5), Jan. 16, 1941.

(2).

Association may not use funds to construct building for express purpose of renting part of it for commercial use, but this would not prevent it from renting out part of a building owned by it and not presently necessary for use. Op. Atty. Gen., (198B-10(a)), Jan. 18, 1940.

Where members of fire department relief association were driving fire truck owned respectively by city and association, and there was a collision, city could not recover damage to city owned truck arising out of negligence of driver of association owned truck, notwithstanding that association carried liability insurance. Op. Atty. Gen., (844B-4), March 5, 1940.

3728. Service pension.

Firemen's relief associations in cities of the second class. Laws 1941, c. 267.

A fireman who qualified by service is entitled to his pension upon reaching age of 50 years though he resigned at age of 48. Op. Atty. Gen., (198B-6(e)), Oct. 23, 1939.

Requirements as to age, years of service and membership are merely minimum requirements, and association may impose additional conditions as to age, service and membership, and such conditions may be set out in certificates or by-laws. Op. Atty. Gen. [198B-6(e)], Aug. 31, 1940.

Where fireman was retired for total disability on account of injuries not in line of duty, after serving only 13 years, fact that he subsequently died had no effect on right to pension, but a funeral benefit could be paid if provided for by by-laws of association. Op. Atty. Gen. (198B-6-f), Dec. 18, 1940.

Statute is controlling over by-laws of a village relief association as to eligibility of members for pension. Id.

3728-1. Firemen's relief association in certain cities.

Firemen's relief associations in cities of the second class, see §§1648-1 to 1648-35.

Where association is authorized to pay a basic pension of \$75 per month, a retired fireman who served 26 years, 10 months, and 18 days is entitled to \$93 per month and not \$96. Op. Atty. Gen., (198B-6(a)), Nov. 1, 1939.

Section is apparently only applicable to associations existing in cities of the third class. Op. Atty. Gen. (198B-6-f), Dec. 18, 1940.

3745. Membership in police or fire department relief associations.

Police officers who enlist or are drafted into military service are not eligible to continue as members of pension system. Op. Atty. Gen., (785J), Mar. 19, 1941.

3750-1. Firemen's relief associations in cities of first class established.

Firemen's relief associations in cities of the second class, see §§1648-1 to 1648-35.

3750-4. Eligibility.—Every fireman as herein defined shall be eligible to apply for membership in the relief association in the city in which he is employed within the time and in the manner hereinafter set forth. Any such fireman desiring to become such member shall, not later than 90 days from the time when he is regularly entered on the payrolls of such fire department, make written application for membership in such relief association on forms supplied by such association, accompanied by one or more physicians certificates as required by the by-laws of said association. After such application has been filed, the

board of examiners of the association shall make a thorough investigation thereof and file their report with the secretary of the association. Such application must be acted upon by the association within six months from the date applicant was entered on the payroll of the fire department. Provided, however, that no fireman who is more than 35 years of age when his application is filed can become a member of the relief association, except that such age limitation of 35 years shall not apply on application for reinstatement in such association.

Any member of the fire department in any city of the first class on January 1, 1941, may be eligible to membership in a firemen's relief association. Such member shall make application within 90 days from and after the passage of this act. His application must be acted upon by the association within six months thereafter.

Upon the acceptance of said application, the membership of such applicant shall become effective as of the date when he was entered on the payroll of the department, provided the applicant shall make up all dues which he would have paid had he been a member of the Firemen's Relief Association from the date he entered upon the payroll of the department. All payments, benefits and privileges to which said firemen are entitled as members of said fund shall be governed by Mason's Minnesota Statutes, 1936 Supplement, Section 3750-1 and 3750-38. (As amended Act Apr. 16, 1941, c. 258, §1.)

3750-23. War service to be included in period of service—National defense emergency.—Any applicant for a service pension who subsequent to his entry into the service of such fire department has served in the military forces of the United States in any war or national defense emergency, or having during such war or emergency entered the employment of the government of the United States and in such service rendered fire prevention service during such war or emergency, and has returned after his honorable discharge from such service and resumed active duty in said fire department, the period of his absence in such service of the United States shall be counted in computing the period of service hereinbefore provided for, but during such period of military or fire prevention service he shall not be considered as an active member of his association. (As amended Act Apr. 16, 1941, c. 258, §2.)

PENALTIES

3766. Rebate on insurance contracts prohibited.

Discrimination by insurance companies in issuance of automobile liability insurance prohibited. Laws 1941, c. 283, see §§360-1.

Granting of rates on policies covering fleets of cars, where same are not under one ownership and management, at a lower rate than available to other purchasers in same class, constitutes a violation of this section. Op. Atty. Gen. (249B-3), June 18, 1940.

3766-1. Discrimination.—No insurance company or its agent shall refuse to issue any standard policy of automobile liability insurance or make any discrimination in the acceptance of risks, in rates, premiums, dividends or benefits of any kind, or by way of rebate between persons of the same class, nor on account of race. Every company or agent violating any of the foregoing provisions shall be fined not less than \$50.00 nor more than \$100.00 and every officer, agent or solicitor violating the same shall be guilty of a misdemeanor. (Act Apr. 17, 1941, c. 283, §1.)

3768. Application of act.—The provisions of this act shall not apply to any policy or policies procured by officers, agents, sub-agents, brokers, employees, intermediaries or representatives wholly and solely upon property of which they are respectively the owner at the time of procuring such policy or policies, where such officers, agents, sub-agents, brokers, employees, intermediaries or representatives are, and have been for more than six months prior to the issu-

ing of such policy or policies, regularly employed by, or connected with, the company or association issuing said policy or policies; and any life insurance company doing business in this state may issue industrial policies of life or endowment insurance, with or without annuities with special rates of premiums less than the usual rates of premiums for such policies to members

of labor organizations, credit unions, lodges, beneficial societies, or similar organizations, or employees of one employer, who through their secretary, or employer may take out insurance in an aggregate of not less than fifty members, and pay their premiums through such secretary or employer. (As amended Act Apr. 28, 1941, c. 505, §1.)

CHAPTER 20

Inspector of Oils

3773. Inspection districts—Compensation of inspectors. [Repealed.]

Repealed. Laws 1941, c. 495.

3773-1. Appointment and removal of deputy, etc.

If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under ex-

isting statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. Reed v. T., 296NW 535.

3787-1 to 3787-21. [Repealed.]

Repealed. Laws 1941, c. 495.

CHAPTER 20A

Inspection of Petroleum Products and other Combustible Fluids

3787-25. Meanings of particular words and phrases.—Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases shall, for the purpose of this act and Mason's Supplement 1940, Section 2720-71, as amended, be given the meanings hereinafter subjoined to them:

Subdivision 1. "Petroleum products" means gasoline fuel oil and farm tractor fuel.

Subdivision 2. "Gasoline" means any petroleum product or other substance which is capable of use as a carburant in internal combustion engines and which has a flash point of less than 100 degrees Fahrenheit when tested with a Tagliabue closed cup tester or an initial boiling point of less than 300 degrees Fahrenheit or a 95 per cent distillation point of less than 464 degrees Fahrenheit when tested by the methods of the American Society for Testing Materials, except farm tractor fuels and special use fuel as defined by law, and except fuel oil or kerosene when the ten per cent distillation point is more than 347 degrees Fahrenheit.

Subdivision 3. "Fuel oil" means any petroleum product other than gasoline as herein defined which is received in this state for distribution to retail consumers and which when tested with a Tagliabue open cup tester shall not flash below 120 degrees Fahrenheit and which has a viscosity of not more than 50 at 100 degrees Fahrenheit by the Saybolt universal process, and any product designated for such use outside this range which is to be blended with other products or processed to produce a resulting product coming within this range.

Subdivision 4. "Distributor" means any person who (1) brings or causes to be brought into this state petroleum products or (2) produces, manufactures, refines or blends petroleum products in this state or (3) receives petroleum products from a refinery, marine terminal or pipeline terminal in this state, for storage and subsequent sale and distribution by tank cars or tank trucks or both.

Subdivision 5. "Person" means any individual, firm, trust, estate, partnership, association, cooperative association, joint stock company or corporation, public or private, or any representative appointed by order of any court.

Subdivision 6. "Dealer" means any person except a distributor, engaged in the business of buying and selling gasoline for use in motor vehicles.

Subdivision 7. "Blender" means any person who mixes together any petroleum product with any other petroleum product or other substance to produce gasoline.

Subdivision 8. "Motor vehicles used on the public highways of this state" means every vehicle operated upon the highways of this state the power for the operation of which is produced or generated in an internal combustion engine, but does not include tractors used solely for agricultural purposes.

Subdivision 9. "Used in motor vehicles" means used in producing or generating power for propelling motor vehicles or in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state.

Subdivision 10. "Commissioner" means the commissioner of taxation of the state of Minnesota.

Subdivision 11. Petroleum products brought into this state shall be deemed to be "received" in this state at the time and place where the same shall be unloaded by the person who at such time shall be the owner thereof; provided, however, that petroleum products produced, manufactured, refined or blended, at a refinery in this state and stored thereat, or brought into the state by boat or barge or like form of transportation and delivered at a marine terminal in this state for storage, or brought into the state by pipeline and delivered at a pipeline terminal in this state for storage, shall not be considered received until loaded at such refinery, marine terminal or pipeline terminal into railroad tank cars, tank trucks, tank wagons, transports or other vehicles for delivery or shipment to points within this state. Petroleum products produced, manufactured, refined or blended at a refinery in this state and petroleum products stored at a marine terminal or a pipeline terminal in this state may be sold, shipped or delivered to distributors who are the holders of unrevoked distributors' licenses issued by the commissioner as in this act provided without liability on the part of the seller for the gasoline tax and inspection fees, but such purchasers shall be liable for the gasoline tax and inspection fees on such petroleum products and shall for the purpose of this act be deemed to be the distributors of the petroleum products so received. (Act Apr. 28, 1941, c. 495, §1.)

3787-26. Inspection—Test—Records.—

Subdivision 1. The commissioner shall make inspections of petroleum products wherever processed, held, stored, or offered for sale or used, and he shall